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See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

MAY 15 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ALONZO WILLIAMS,

Petitioner Employee,

v.

THE INDUSTRIAL COMMISSION OF
ARIZONA,

Respondent,

BURSTIN' BERRIES SMOOTHIES
LLC,

Respondent Employer,

FARMERS INSURANCE EXCHANGE,

Respondent Insurer.

2 CA-IC 2008-0009
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil
Appellate Procedure

SPECIAL ACTION - INDUSTRIAL COMMISSION

ICA Claim No. 20072-130712

Insurer No. E4027733

Karen Calderon, Administrative Law Judge

AWARD AFFIRMED

Alonzo Williams

Ajo
In Propria Persona

The Industrial Commission of Arizona
By Laura L. McGrory

Phoenix
Attorney for Respondent

Jardine, Baker, Hickman & Houston
By Stephen C. Baker

Phoenix
Attorneys for Respondents
Employer and Insurer

V Á S Q U E Z, Judge.

¶1 In this statutory special action review of an Industrial Commission decision, petitioner Alonzo Williams contends the Administrative Law Judge (ALJ) erred in finding his condition was medically stationary with no permanent disability and closing his workers' compensation claim. We affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the Industrial Commission's findings. *Polanco v. Indus. Comm'n*, 214 Ariz. 489, ¶ 2, 154 P.3d 391, 392-93 (App. 2007). On July 19, 2007, Williams injured his back while moving a refrigerator out of the restaurant he owned and managed. His injury was deemed compensable, and he subsequently received chiropractic and other medical treatment. His claim for benefits was closed on September 7, 2007, with no permanent disability. Williams requested a hearing, which was held over five successive dates and included his testimony and the testimony of the chiropractic and medical doctors who examined him.

¶3 At the hearing, Williams testified about the circumstances of his injuries and the symptoms and pain he continued to experience. He testified that after his claim was closed, he continued to have back spasms, his legs went numb after sitting for more than thirty minutes, and his hands and arms went “to sleep” if they were bent for a period of time. He asserted these problems were all caused by his industrial injury.

¶4 Dr. Krasner, board certified in occupational medicine, examined Williams on September 7, 2007. He noted Williams’s physical examination was “completely normal,” except for slight decreased sensation in his left arm and leg. After ordering x-rays, he found “no significant findings related to any injury” and concluded “[t]here was nothing to indicate the need for medical treatment with regards to his work injury. It ha[d] reached it[']s max and was stationary.” He did not find any permanent impairment or a need for supportive care or work restrictions. He also testified at the hearing that although Dr. Kahlon, Williams’s current treating physician, had noted a bilateral radiculopathy, a spinal nerve condition, Kahlon had failed to document the objective findings supporting that conclusion. Based on his own review, Krasner concluded Williams’s MRI revealed only “congenital and degenerative findings not related to the industrial injury.”

¶5 Dr. Wright-Smith, a chiropractor, testified that she had treated Williams for a lumbar sprain/strain, muscle spasm, sciatica, and thoracalgia between October 2007 and January 2008. However, apparently Williams had not informed her originally that his injuries were part of a workers’ compensation claim, and upon learning of the claim, she told him she would “have to figure out what [she] could do to help him, but [she] would not see

him as a patient in the office at that time.” She also stated she did not “have any recommendations for continuing care for any of the conditions that [she] diagnosed.”

¶6 Dr. Kahn, a board-certified neurologist, examined Williams in February 2008 at the request of the insurer. He testified that he conducted an examination, at which Williams reported significant pain and impairment, but the examination revealed no objective, physical findings of radiculopathy or myelopathy, a problem with the spinal cord. He also noted that Williams had a “congenitally small spinal canal” and “bilateral carpal tunnel syndrome,” but that neither condition could be attributed to Williams’s industrial injury. Upon review of Williams’s entire record and his personal examination, Dr. Kahn concluded the accident had caused “a strain of his thoracolumbar region” but that his condition was now stationary without need of supportive care and there was no permanent impairment or work restriction related to the industrial injury.

¶7 Dr. Kahlon, a board-eligible specialist in neurology, testified on Williams’s behalf. He first saw Williams in November 2007. At that time, he noted Williams was experiencing decreased sensation in his lower extremities, decreased range of motion of his neck and spine, and nerve impingement in his arms. Further testing revealed that Williams’s spinal canal was congenitally small and there was narrowing of the central spinal canal. Based on the tests, he believed that Williams probably had carpal tunnel syndrome in his hands and that problems with his lower extremities “could be related to something . . . from his spine.” After treating Williams through March 2008, Kahlon concluded that Williams had chronic pain syndrome, lumbar spine degenerative disc disease, mild pressure on the

nerves in his hand, and a pinched nerve in his “right lower extremity.” He stated as a result of these diagnoses, Williams could not do any heavy lifting and needed physical therapy and pain medication but would “recover gradually in his function.” On this basis he recommended some continuing supportive care.

¶8 After hearing the testimony, the ALJ “accept[ed]” the testimony of Krasner and Kahn and closed the claim, “effective February 1, 2008 with no permanent disability.” Williams filed a request for review, but the ALJ affirmed her prior decision. Williams timely filed a request for review. We have jurisdiction pursuant to A.R.S. §§ 23-951, 23-943(H), and Rule 10, Ariz. R. P. Spec. Actions.

Standard of Review

¶9 “We deferentially review the ALJ’s factual findings but independently review [her] legal conclusions.” *Grammatico v. Indus. Comm’n*, 208 Ariz. 10, ¶ 6, 90 P.3d 211, 213 (App. 2004). It is the ALJ’s province to resolve conflicts in expert testimony, and we are bound by the ALJ’s resolution unless no reasonable evidence exists to support it. *Kaibab Indus. v. Indus. Comm’n*, 196 Ariz. 601, ¶ 25, 2 P.3d 691, 699 (App. 2000). Similarly, we will not reverse the ALJ’s award if it is supported “by any reasonable theory of evidence.” *Id.*

Discussion

¶10 Williams contends the ALJ erred in finding his industrial injury was stationary, with no permanent impairment, need for work restrictions, or supportive care. He argues that Kahlon “explained several times that the reason[] for his findings” related to Williams’s

current conditions was that Williams had “gotten hurt at work.” And, he asserts the ALJ should have accepted Kahlon’s testimony over Krasner’s and Kahn’s because Kahlon “was the only doctor that worked with [him] for more than 20 minutes.”

¶11 A claimant’s medical condition becomes stationary once his “physical condition has reached a ‘relatively stable status’ so that nothing further in the way of medical treatment is indicated to improve that condition.” *Home Ins. Co. v. Indus. Comm’n*, 23 Ariz. App. 90, 94, 530 P.2d 1123, 1127 (1975), *quoting Aragon v. Indus. Comm’n*, 14 Ariz. App. 175, 176, 481 P.2d 545, 546 (1971). However, a claimant may be entitled to supportive care “to prevent or reduce the continuing symptoms of an industrial injury after the injury has become stab[il]ized,” if he meets his “burden of proving the continuing industrial effect upon the condition.” *Capuano v. Indus. Comm’n*, 150 Ariz. 224, 226, 722 P.2d 392, 394 (App. 1986).

¶12 Here, contrary to Williams’s argument, even if the ALJ had accepted Kahlon’s testimony, it does not establish that the industrial injury was not stationary or that Williams required supportive care. Kahlon testified about Williams’s current conditions and the need for treatment to alleviate his symptoms and pain and noted there was a “good probability” that Williams’s pinched nerve was work related. However, both Kahn and Krasner disagreed with Kahlon’s conclusion that the industrial injury was ongoing, and at no time did Kahlon give an opinion that any of Williams’s other current symptoms and diagnoses were attributable to the industrial injury. When asked whether he found a need for active care related to the industrial injury, Kahlon only stated that the treatment Williams was receiving

was “already benefitting” him. And, when asked whether the injury “was an aggravation of th[e] preexisting narrowed spine,” Kahlon stated, “his narrowing is congenital, and I don’t think therapy is going to change that. But it certainly will help alleviate the symptoms.” He also testified that he did not see this as “a long lingering injury,” and he thought “with therapy, . . . [Williams is] going to improve much.”

¶13 Thus, the ongoing care Kahlon recommended was directed at alleviating the symptoms of Williams’s congenitally narrow spine, not the muscle sprain resulting from the industrial accident. The testimony therefore did not establish Williams needed ongoing care related to the industrial injury. *See Arellano v. Indus. Comm’n*, 25 Ariz. App. 598, 604, 545 P.2d 446, 452 (1976) (for claimed aggravation of underlying condition to be compensable, claimant must show both temporary but unabated aggravation and relationship between aggravation and current pain and symptoms); *Capuano*, 150 Ariz. at 226, 722 P.2d at 394 (claimant bears burden of entitlement to supportive care).

¶14 Krasner and Kahn both testified about their examinations of Williams and their thorough review of his medical records. They agreed with Kahlon that Williams’s tests revealed “some congenital and degenerative findings,” but they opined those conditions were not related to the industrial injury. In support of his opinion, Krasner noted that Kahlon had failed to support his diagnosis of radiculopathy with objective findings upon examination and had based his diagnosis only on Williams’s self-report. Krasner’s findings and testimony were supported by Kahn, who similarly found no objective indications of radiculopathy or any condition that would suggest the industrial injury had not stabilized.

¶15 It “is the duty of the ALJ to resolve conflicts in the evidence and to determine which opinion is more probably correct.” *Kaibab*, 196 Ariz. 601, ¶ 25, 2 P.3d at 699. Here, the ALJ resolved a conflict in the testimony and “accept[ed] Dr. Kahn’s and Dr. Krasner’s testimony” that the injury was stable and supportive care was not warranted. On this record, we cannot say the ALJ’s resolution is unsupported by the evidence. *See id.*

Disposition

¶16 For the reasons stated above, we affirm the award.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge